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September 9, 2014

VIA FEDERAL EXPRESS

Pat Evangelista
Environmental Protection Agency – Region 2
290 Broadway – 26th Floor
New York, New York 10007

Re: Rahway Arch Project Final Geotechnical Engineering Report

Dear Mr. Evangelista:

Enclosed please find a disc containing an unredacted copy of the Rahway Arch Property Final Geotechnical Engineering Report, which the United States Environmental Protection Agency ("EPA") requested from our client Soil Safe, Inc. Soil Safe considers certain portions of the Report text and appendices to be Confidential Business Information pursuant to 40 C.F.R. §2.203(b). Soil Safe asks that EPA not distribute the original or copies of this Confidential Business Information to anyone other than those EPA employees who EPA deems necessary to analyze the Report or third-party consultants who are contractually required to keep this information confidential. Soil Safe expects that this Confidential Business Information will not be disclosed to any third party in response to any Freedom of Information Act ("FOIA") request or other request for disclosure. Soil Safe requests that EPA immediately notify Soil Safe if EPA determines that any portion of the designated information does not qualify as Confidential Business Information or if EPA receives a FOIA request or other request for disclosure that covers the Report.

Soil Safe is providing this unredacted copy of the Report in the continued spirit of cooperation. EPA has had a redacted version of the Report for some time now. And, Soil Safe has, from the beginning, been willing to share the unredacted version of the Report with the EPA. Previously, Soil Safe made the following offers:

1. Soil Safe would coordinate with the New Jersey Department of Environmental Protection ("NJDEP") to arrange for any EPA personnel (or any EPA consultants) to come to the NJDEP's offices in Trenton, New Jersey to review the unredacted version of the Report;

2. Soil Safe's President Mark Smith and the project Licensed Site Remediation Professional ("LSRP") would travel to EPA Region 2's headquarters, with a copy of the unredacted Report, to allow any EPA personnel (or any EPA consultants) to review the Report and to answer any questions EPA or its consultants might have; and
3. When Soil Safe became aware that EPA intended to "farm out the Report for review" by a consultant, Soil Safe offered to work directly with the EPA's consultant to work out a confidentiality agreement, provide them with the unredacted Report, and work cooperatively with the EPA's consultant throughout the review process.

Inexplicably, none of these alternatives were acceptable to EPA. Instead, EPA threatened to issue an administrative information request under §104(e) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") to obtain the Report. Such a step is unwarranted because petroleum-contaminated soil (which is what Soil Safe will be recycling to create the engineered fill to cap the contamination at the Rahway Arch Property) is not a CERCLA hazardous substance. Therefore, EPA has no basis to issue a CERCLA §104(e) information request with respect to Soil Safe's soil recycling and capping operation. However, such a step is also unnecessary because Soil Safe has consistently offered to make the unredacted Report available to EPA. Soil Safe's reluctance to simply send EPA an unredacted copy of the Report has stemmed from Soil Safe's desire to protect from disclosure to competitors certain information that Soil Safe deems proprietary. Soil Safe is now sending the unredacted Report to EPA, despite that concern, in reliance upon EPA's regulations regarding material designated as Confidential Business Information. Soil Safe is confident that EPA and its consultants will find the Report to be technically accurate, and will agree with the NJDEP review team, the LSRP, and the team of licensed professional engineers who are responsible for the remedial design that this Report contains the appropriate recommendations regarding the remediation activity that has started at the Rahway Arch Project site.

While agreeing to send the enclosed unredacted copy of the Report to EPA, Soil Safe remains perplexed by EPA's sudden interest in reviewing technical reports related to the Rahway Arch Project. Soil Safe also does not understand what jurisdiction EPA has that justifies its insistence on reviewing the unredacted Report or its threat to use enforcement powers to obtain the Report. We have asked EPA Assistant Regional Counsel Amy Chester several times for the basis of EPA's purported jurisdiction and have yet to receive an answer. EPA twice studied the site (in 1991 and 2008) for potential inclusion on the National Priorities List, but found that the Hazard Ranking System score was too low. Thus, since the inception of the Project and during all of the previous remediation activities by Cytec, the site has been subject to NJDEP oversight. For the past four years, both Soil Safe's proposed Class B Recycling Center operation and the associated proposed remediation of the Rahway Arch property have been the subject of intense review and scrutiny by NJDEP's technical staff in various departments, including the NJDEP's Air Quality, Land Use, Site Remediation, and Solid and Hazardous Waste Management Programs. Indeed, given questionable concerns expressed by certain environmental activist groups, the Rahway Arch Project is one of the most scrutinized cleanups ever to occur in New

Jersey. But after four years of review, the experienced professionals at NJDEP finally granted the necessary permits and approvals for the remediation project to proceed.

If EPA was interested in participating in the process it could and should have done so much earlier. EPA, which has been aware of the proposed remediation project since at least the first quarter of 2012, could have approached NJDEP to request an opportunity to review submissions and become involved in the decision-making process at any time. Alternatively, EPA could have submitted comments like any other member of the public. EPA chose to do neither, presumably recognizing that: (1) the EPA has no jurisdiction and the appropriate environmental oversight of the property resided with the state; and (2) the EPA could rely upon the experience and professionalism of the NJDEP personnel involved, including Ken Kloo, Mark Pederson, and Anthony Fontana.

It is disquieting, therefore (not to mention frustrating to Soil Safe), that EPA has now decided to interject itself into this matter *after* the NJDEP has made its decisions and issued the necessary permits and approvals. That decision no doubt has resulted from requests by activist groups such as the NY/NJ Baykeeper, which has effectively orchestrated a deceptive campaign against the Project in front of unsuspecting regulators, politicians, media and the public. Since the NJDEP decided to approve the Rahway Arch Project, groups disappointed by the NJDEP's decision have engaged in an all-out effort to mount collateral attacks on that decision. They have incited the press, using fear-mongering tactics that the NJDEP has had to actively work to debunk. These groups have approached politicians in the State of New York (despite that the Rahway Arch property and Project are located entirely in New Jersey) – apparently because New Jersey Senators and Congressmen already are aware of and support the Project. They have also contacted the New York City Council and New York State Attorney General's office, both of whom have since sought to involve themselves. And now the EPA apparently intends to join these others in seeking to conduct its own independent analysis.

By doing so, EPA will create a dangerous precedent. Soil Safe and other members of the regulated community should be able to rely upon decisions, permits, and approvals issued by the NJDEP. After engaging in years of hard work and spending millions of dollars to satisfy the NJDEP and obtain the necessary permits and approvals, Soil Safe and others should not have to fear the EPA stepping in at the 13th hour to second guess the NJDEP. It is not fair to the regulated community, is unprecedented in the remediation industry, and calls into question the entire permitting process employed by the State. It needlessly wastes limited public resources that could be better applied to sites where there is no government supervision and no cleanup plan in place. And, it undermines the NJDEP and its professionals.

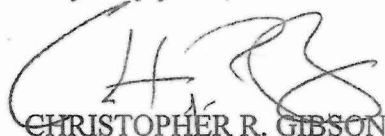
As the NJDEP has concluded after four years of analysis, the Rahway Arch Project will be a tremendous benefit in terms of protecting human health and the environment. Contaminants have been leaching into the groundwater beneath the site and into the Rahway River from the cyanide-contaminated sludge impoundments left behind by American Cyanamid's operations. The berms creating the sludge impoundments are progressively deteriorating. In some places, the berms already have deteriorated to the point where remedial action is now a critical path issue. Soil Safe's recycled engineered fill product will be used to construct a cap over the unstable, contaminated material at the site, and will essentially eliminate further leaching. We

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do not understand why the EPA would want to interfere with or delay this important public project by reaching outside of its jurisdiction to engage in an unnecessary review of a report prepared by a world-class geotechnical firm and already thoroughly reviewed, approved and accepted by the NJDEP.

Soil Safe respectfully suggests that the EPA should reconsider its desire to review the Report, and should simply send the Report back to Soil Safe.

Very truly yours,



CHRISTOPHER R. GIBSON

CRG:ckh

Enclosure

cc: Judith A. Enck, Regional Administrator (EPA) (w/o encl.)
Eric Schaaf, Regional Counsel (EPA) (w/o encl.)
Walter E. Mugdan, Director (EPA) (w/o encl.)
Amy R. Chester, Assistant Regional Counsel (EPA) (w/o encl.)
Bob Martin, Commissioner (NJDEP) (w/o encl.)
Mark J. Pedersen, Acting Assistant Commissioner (NJDEP) (w/o encl.)
Ken Kloo, Director (NJDEP) (w/o encl.)
Anthony Fontana, Chief (NJDEP) (w/o encl.)
Senator Robert Menendez (w/o encl.)
Senator Cory A. Booker (w/o encl.)
David C. Apy, Assistant Attorney General (w/o encl.)
Mayor Daniel J. Reiman (w/o encl.)
Mark Smith, Soil Safe President (w/o encl.)
Albert P. Free, LSRP (w/o encl.)

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CONTROL OF OFFICE
CORRESPONDENCE
SECTION 2

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
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NEW YORK, NY 10007-1866

NOV 17 2014

The Honorable Bob Martin
Commissioner, New Jersey Department of
Environmental Protection
PO Box 402
401 East State Street, Floor 7
Trenton, NJ 08625-0402

Dear Commissioner Martin:

This is to follow up our conversations about the proposed project at the Rahway Arch Properties LLC site (Site), located at 300 Salt Meadow Drive in Carteret, New Jersey. Thank you for affording my staff the opportunity to meet with your staff and the Licensed Site Remediation Program (LSRP) consultant on November 13, 2014, regarding the project. The U.S. Environmental Protection Agency (EPA) continues to have serious concerns about this Site.

Rahway Arch Properties LLC proposed to the New Jersey Department of Environmental Protection (NJDEP), through its consultant, EastStar Environmental Group (LSRP consultant for Site), to address the 125-acre Site in a wetlands complex immediately adjacent to the Rahway River. The work proposed would involve the placement of an "engineered low permeability fill cap" (cap) over the existing six surface impoundments containing approximately 2 million tons of contaminated sludge which comprise over 85 acres of the Site, and implementation of storm water controls. Soil placement thicknesses in the range of five (5) to thirty (30) feet were assumed for the cap during the geotechnical investigation. The LSRP consultant expects the cap to have an average Site thickness of eight (8) feet. The cap would be comprised of thousands of cubic yards of low-level petroleum contaminated soil; the soil would be processed on-site by Soil Safe under an NJDEP-issued Class B recycling permit. The objectives of the cap are to raise the Site above the high tide levels of the Rahway River and the new Advisory Base Flood Elevations to prevent storm water infiltration, presently estimated at 25,500,000 gallons of water, from infiltrating through the contaminated materials into the groundwater; to manage and discharge the storm water to surface water through an engineered storm water management system; and to establish a structurally stable surface on the Site that also prevents direct contact with the yellow prussiate of soda-aluminum sludge.

EPA conducted a review of the proposed site remediation plan. A number of EPA staff and I conducted a site visit on June 24, 2014 and, at EPA's request, were provided by NJDEP with numerous site documents for EPA's review. In addition to our recent meeting, this information was helpful in allowing EPA to come to a more thorough understanding of the site conditions and site remediation plan.

Based on EPA's review of the proposed plan, EPA has identified several concerns and seeks further clarification regarding the protectiveness of the proposed remedial approach.

EPA believes that further site investigation is needed to clearly define the goals and objectives of the proposed remedial plan. Comprehensive, site-wide remedial action objectives should be initially established to describe what the remedial action is expected to accomplish for the entire site; and preliminary remedial goals should be developed as targets for the remedial action to be protective of human health and the environment. EPA does not understand, for example, how the LSRP consultant plans to investigate potential impacts to the "wetland areas and the adjacent surface water features" in the immediate vicinity of the sludge impoundments while the cap is being constructed. EPA believes such potential impacts should be characterized in advance of cap construction and considered earlier in the Site remedy selection process if necessary and appropriate.

Remedial action objectives provide a general description of what the cleanup is expected to accomplish and help focus the development of remedial alternatives. Remedial action objectives specify the contaminants and media of concern, exposure routes and potential receptors, and an acceptable concentration limit or range for each contaminant for each of the various media, exposure routes and receptors. Remedial action objectives are developed early in the remedial alternative development process to set targets for achieving preliminary remediation goals (such as applicable or relevant and appropriate requirements to protect public health and the environment). The remedial action objectives should be as specific as possible but should not limit the range of remedial alternatives that can be developed.

In addition to the lack of clearly defined remedial action objectives and preliminary remediation goals for the entire site, EPA is concerned about the cap's design basis and impacts that may occur during its construction on areas of the site that overlie any groundwater that will contact the sludge and discharge to the Rahway River.

The proposed cap design is based on the existing hydrostatic conditions; that is, contaminated groundwater migrates from the site and then discharges and mixes with the Rahway River surface water. It is our concern that this groundwater will likely become mounded beneath the proposed cap construction. We believe that once the cap (especially with the elevations proposed) is in place, the new compressional and vertical load forces will increase downward pressure on the mounded groundwater, and contribute towards changing the current hydrostatic conditions and potentially resulting in changes to groundwater migration, direction and flow path. In addition, there is the potential that the new cap will also introduce lateral forces on the existing berms whose existing structural integrity has not been established (inconsistent information in the site files regarding the berm stability should be addressed). Our major concern is one of unintended consequences. EPA has not been provided sufficient information to establish a significant degree of confidence that these lateral forces will not compromise the existing structural integrity of the berms and potentially cause a catastrophic release.

The final remedial alternative analysis, which may or may not include a cap, should also address whether additional engineering controls [such as groundwater collection/ extraction/treatment and site containment (slurry walls, sheet piling and/or reactive walls/cap) in the area of discharge] are warranted to protect human health and the environment.

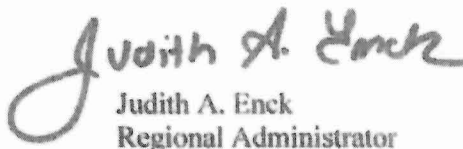
To summarize, EPA has the following specific questions regarding the proposed Site remediation:

- 1) Please describe the remedial action objectives and "entire Site" remedial goals for the remedial action to be protective of human health and the environment.
- 2) How will the cap construction activities be performed and monitored to avoid berm failure and releases to areas outside such berms including to the Rahway River?
- 3) How will the displaced contaminated volume within the impoundments anticipated during cap construction be managed?
- 4) How will the efficacy of the cap in protecting human health, groundwater, surface water, and the wetlands in proximity to the Site during and, long-term, after construction be assessed?
- 5) Please explain why the cap does not need to be supplemented with additional engineering controls as described in the above paragraph?
- 6) How will currently compromised berm areas be repaired?
- 7) Since areas outside the bermed impoundments have not yet been appropriately characterized, how will they be evaluated for remediation?
- 8) Since the Rahway River is known to currently routinely flow in and out of at least one of the impoundment areas, how will the cap be protected from flooding?
- 9) Please explain how the "entire Site" remedy will be financially assured to be indefinitely monitored and properly maintained to be protective of human health and the environment.
- 10) What specific funding amount has been dedicated for this purpose and how will it be replenished, if necessary, for the indefinite life of the capping remedy?

In 2007, EPA requested that the NJDEP conduct a reassessment of the Site under the Hazardous Waste Inventory Preliminary Assessment/Site Investigation Cooperative Agreement. That reassessment, dated September 2007, resulted in a decision by EPA of No Further Remedial Action Planned (NFRAP) under the federal Superfund program. On April 25, 2013, the NJDEP staff conducted a Site Inspection which concluded that the Site conditions had changed. In particular, Impoundment 1 had released materials into a creek leading to the Rahway River. Because conditions at the Site changed, the EPA requests the NJDEP reassess the Site under the Hazardous Waste Site Inventory Preliminary Assessment/Site Investigation Cooperative Agreement.

I look forward to receiving your response to EPA's concerns. Thank you.

Sincerely,


Judith A. Enck
Regional Administrator

cc: Mark J. Pedersen, NJDEP